IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1775 OF 2004
IN
SUIT NO.1940 OF 2003

Dr.Ashok M. Bhat & Anr. ...Plaintiffs
V/s.
Dr.Lalita M. Bhat & Anr. ...Defendants

Mr.Pesi Mody with Mr.Ranjit Bhanushali i/b Thakore Jariwala & Associate for the Plaintiffs.
Mr.S.H. Doctor with Mr.Sumit Purohit i/b Dhruve Liladhar & Co. for Defendant No.1.

CORAM : S.J. VAZIFDAR, J.
DATED : 17TH NOVEMBER, 2005.

P.C. :

1. This is a Chamber Summons for amendment of the plaint. It is necessary to mention at the out-set that the schedule to the Chamber Summons in terms whereof the amendment is sought, has been replaced.

2. The proposed amendment i) seeks to add paragraph 2A after paragraph 2 in the plaint. In paragraph 2 of the plaint, it is contended that the maternal grand-mother of the parties one Mrs.Erna who expired in 1964 was the owner of certain properties. On behalf of the Defendants, it was contended that the said Mrs.Erna was not the owner of the properties and that in fact the properties were owned by the

Defendants. Probably in view of this, the proposed amendment has been sought.

3. By this amendment, the Plaintiffs now seek to contend that Defendant No.1 on her own showing was not earning at the time when the said properties were alleged to have been purchased and acquired by her, that she is therefore not the owner thereof, that such properties were purchased and acquired by the grand-father, grand-mother and the father of Plaintiff No.1 that the same therefore belong to the HUF and therefore, Plaintiff No.1 as member of the said HUF is equally entitled to such properties.

4. It is apparent from the above proposed amendment that the same is not only vague but without any particulars whatsoever. The lack of particulars is not limited to lack of evidence but to the lack of particulars in respect of the creation of the alleged right itself. There is no mention as to the creation of the HUF. There is no mention about the partition thereof. Nor are any particulars as to who acquired the properties namely the grand-father, grand-mother or father of Plaintiff No.1 or any one or more of them. The amendment therefore, must be rejected on the ground that it is totally useless and will not be

an aid in determining the true issues between the parties.

5. Further the proposed amendment is without prejudice to what is stated in paragraph 2 of the plaint. However, by the proposed amendment ii) prayers have been sought in a diametrically opposite manner. In the original prayer a declaration of 1/3rd right for the Plaintiff and a 2/3rd right for the Defendants is sought in respect of the estate of the said Mrs.Erna. In the amendment an equal right in her estate has been sought as the principal prayer.

6. The prayers in the amendment are therefore contrary to the proposed pleading.

7. In the circumstances, the Chamber Summons is dismissed with no order as to costs.